

MARIE LOMBARDO

IBLA 78-469

Decided October 18, 1978

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting Class 1 Color of Title application CA 4938.

Affirmed.

1. Color or Claim of Title: Generally

A claim or color of title must be based upon a document which on its face purports to convey the land applied for to the applicant or her predecessors.

2. Color or Claim of Title: Generally

A class 1 color of title claim requires good faith, peaceful possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years.

3. Color or Claim of Title: Generally—Color or Claim of Title: Applications

A color of title application for land which is not described in deeds in the chain of title must be rejected even though the applicant and her predecessors believed the land was covered by the deeds. The burden of proving a valid color of title claim is on the claimant.

4. Color or Claim of Title: Generally

A color of title application for land which has been withdrawn prior to any conveyance

in applicant's chain of title is properly rejected.

APPEARANCES: Dennis L. Beck, Esq., of Crossland, Crossland, Caswell, and Bell, Fresno, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Marie Lombardo appeals from the May 10, 1978, decision of the California State Office, Bureau of Land Management (BLM), rejecting her application CA 4938 under the Color of Title Act of December 22, 1928, (45 Stat. 1069), as amended, 43 U.S.C. § 1068 et seq. (1970). Appellant filed a Class 1 Color of Title application March 2, 1978, for a 2.86-acre portion of the N 1/2 SW 1/4 and SW 1/4 SW 1/4, sec. 24, T. 12 S., R. 24 E., Mount Diablo meridian. ^{1/} The State Office rejected the application because the land was withdrawn in 1908, 38 years prior to the first deed in appellant's chain of title.

Appellant claims her chain of title stems from a patent issued in 1913 by the United States which related back to a homestead entry and claim filed August 30, 1906, 2 years before the 1908 withdrawal. The first deed in appellant's chain of title after the patent was recorded in 1946. She does not submit copies of that or subsequent deeds to show the land's description. However, from the information in the record it appears she cannot show color of title. The patent, on its face, does not cover the land applied for in this appeal.

Appellant asserts that her predecessor "intended to claim [the land applied for here] as part of the homestead which he filed in 1906 and * * * the government * * * intended to convey * * * the entire property * * *." Appellant suggests there are discrepancies between an 1880 survey and more recent surveys but presents no evidence on this point.

[1] A claim or color of title must be based upon a document, which on its face purports to convey the land applied for to the applicant or her predecessors. Mable M. Farlow, 30 IBLA 320 (1977);

^{1/} In her application appellant gives a metes and bounds description of a portion of the SW 1/4. There is no assertion that the patent covers these lands.

Mildred A. Powers, 27 IBLA 213 (1976); Cloyd and Velma Mitchell, 22 IBLA 299 (1975). Appellant cannot rely on the patent from the United States to support her color of title claim. If the land applied for was included in the patent, appellant would have no need for the color of title statute; she would have actual title. See Margaret C. Moore, 5 IBLA 252, 254 (1972).

[2] A class 1 color of title claim is defined in 43 CFR 2540.0-5(b) as:

[O]ne which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation.

In her application appellant indicates she first learned she did not have title to the land in 1955. Appellant would have to have the requisite 20-year holding under color of title in good faith prior to 1955. This she has not shown. Even if the 1946 deed described the 2+ acres in question here, there would only be a holding in good faith under a color of title for 9 years.

[3] The time held under the patent alone cannot be tacked on here. The land applied for here was not covered by the patent. Appellant's assertion that both her predecessor and the Government intended that the land be included, without more, is insufficient to establish any right in the property. A color of title application for land which is not described in the deed must be rejected even though the applicant and her predecessors believed the land was covered by the deeds. William P. Surman, 18 IBLA 141 (1974). The burden of proving a valid color of title claim is on the claimant. Frank W. Sharp, 35 IBLA 257 (1978); Mable M. Farlow, *supra*. Appellant has offered no proof either that the survey at the time of patent placed the claimed lands within the description in the patent, or that any of the deeds in her chain of title cover this land.

[4] Furthermore, even if the deed in 1946 described the subject lands it was 38 years after the land was withdrawn. A color of title application for land which has been withdrawn prior to any conveyance in the applicant's chain of title is properly rejected. Jeanne Pierresteguy, 23 IBLA 358 (1975); Margaret C. Moore, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

